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**IN THE SUPREME COURT
STATE OF ARIZONA**

7 COMMENT ON PETITION TO
8 AMEND THE EVICTION ACTION
9 RULES .
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Supreme Court No. R-07-0023

**Comments of the State Bar of
Arizona Regarding the Petition to
Amend the Eviction Action Rules.**

14 On December 12, 2007, the State Bar submitted its proposed Uniform
15 Rules of Procedure for Eviction Actions in order to provide for a uniform
16 application of procedural rules in the high-volume, quick-paced area of forcible
17 entry and detainers from rental property, also known as evictions. The Bar
18 submitted its proposed rules after the development of a rules package by its
19 Landlord/Tenant Task Force (the Task Force) composed of members of the
20 judiciary, other court personnel (e.g., a constable), lawyers who traditionally
21 represent either landlords or tenants, and other members of the Bar. The Task
22 Force sought in the rules to ensure consistency and due process for all litigants
23 in eviction actions, and to provide for greater assurances that tenants
24 understand the proceedings while still maintaining respect for the expedited
25 time frame which the Arizona statutes and the multi-family housing industry
require.

1 This Court's red-lined revisions to the rules package submitted by the Bar
2 preserve the broad-based consensus reached by the stakeholders during the
3 Task Force drafting process and provide a framework for the uniform
4 application of procedural rules in eviction actions. The red-line represents a
5 detailed analysis and careful study by this Court of the recommendations
6 proposed by the Bar, as developed through a consensus in the Task Force.
7 Stakeholders have had the opportunity to participate in both the original
8 drafting process and in the public comment period following the original
9 submission. The red-lined rules package preserves the relative positions of
10 litigants on either side of an eviction action. The State Bar urges the Court to
11 adopt the rules package¹ following the extended comment period.

12
13 ¹ With respect to one issue struck from the original proposal, the ability
14 to notice a judge in justice court actions, the Bar seeks to explain its proposal,
15 as attached, in further detail. The Bar's original proposal recommended one
16 peremptory notice per side in all eviction actions, whether tried in front of a
17 superior court judge, a justice of the peace, or a judge or justice of the peace
18 *pro tempore*, and the original proposal also included many of the safeguards
19 against delay found in Ariz. R. Crim. P. 10.2. The Court's red-lined revisions
20 limit a peremptory notice of judge to superior court actions. Existing practice,
21 at least in Maricopa County, permits each party to exercise a peremptory notice
22 in justice court. Existing law would also appear to support the practice. This
23 Court has expressly permitted a peremptory notice of limited jurisdiction
24 judges in a criminal action due to the lack of *de novo* review on appeal, see
25 Cain v. City Court, 135 Ariz. 96, 98 (1983) (as to municipal courts) and State
v. Greenlee County Justice Court, 157 Ariz. 270, 273 (App. 1988) (as to justice
courts), and the similar absence of *de novo* review supports a similar result in
eviction actions in justice court. To the extent this Court concludes that the
effective and speedy administration of justice, or other authority, precludes the
absolute right to a peremptory notice in an eviction action in justice court, the
Bar urges consideration of an alternative that would permit peremptory notices
in consolidated or co-located justice courts where venue is not at stake.

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RESPECTFULLY SUBMITTED this 13th day of November, 2008.

John Furlong
General Counsel
STATE BAR OF ARIZONA

Electronic copy filed with the
Clerk of the Supreme Court of Arizona
this _____ day of _____, 2008.

by: _____

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APPENDIX # 1
STATE BAR’S PROPOSED RULE ON NOTICING JUDGES

1 Rule 11(e) as Proposed by the State Bar Change of Judge

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3 (1) Change as a Matter of Right

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5 A. Each side is entitled to one change of judge as a matter of right
6 unless otherwise provided by local court rules. A party may exercise this right
7 by giving notice that contains the name of the judge to be challenged and an
8 avowal that contains the following:

- 9 (i) That the request is not being made for the purpose of delay;
10 (ii) That the request is not being made for the purpose of interfering
11 with the reasonable case management practices of a judge;
12 (iii) That the request is not being made to remove a judge for reasons
13 of race, gender or religious affiliation; and
14 (iv) That the request is not being made for the purpose of using this
15 rule against a particular judge in a blanket fashion by either a law firm, legal
16 organization or landlord.

17
18 Notice under this section may be given orally or in writing in justice court, or
19 in writing in the superior court.
20

21 B. The notice for change of judge as a matter of right must be filed
22 on or before the date of the first court appearance with the judge in question;
23 otherwise, it may be denied as being untimely.
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1 C. If a timely notice for change of judge as a matter of right is filed
2 against a justice of the peace, the case shall immediately be transferred to
3 another justice of the peace located in the same building or in an adjoining
4 justice court precinct. If the justice court receiving the transfer is located in the
5 same building or is sufficiently close to the transferring court to enable a
6 prompt transfer, then every effort will be made by the receiving justice court to
7 hear the case on the same date it was originally scheduled.

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9 (2) Change for Cause

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11 A. A party may challenge a judge for cause either by filing a written motion
12 verified by affidavit of the moving party, or by oral avowal, that specifically
13 alleges the grounds for challenge. A party who makes an oral challenge for
14 cause must, not later than the close of business the following day, file a written
15 motion with the court that is verified by affidavit that specifically alleges the
16 grounds for challenge for cause.

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18 B. If a challenge for cause is filed against a justice of the peace, a copy of
19 all relevant documents shall be immediately transmitted to the presiding justice
20 of the peace for the county. The presiding justice of the peace shall make a
21 decision on the challenge by the close of business of the next business day and
22 shall either transfer the case to an adjoining justice court precinct or return it to
23 the original judge.

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APPENDIX # 2
STATE BAR’S ALTERNATIVE PROPOSAL
MODIFICATION TO RED-LINED RULE 1

1 **Rule 1. Title and Scope of Rules**

2 These rules shall be known and cited as the Rules of Procedure for
3 Eviction Actions (“RPEA”). These rules shall govern the procedure in the
4 superior courts and justice courts involving forcible and special detainer
5 actions, which are jointly referred to in these rules as “eviction actions.” For
6 purposes of these rules, there shall be only one form of action known as an
7 “eviction action.” The Arizona Rules of Civil Procedure apply only when
8 incorporated by reference in these rules, except that Rule 42(f) shall apply in
9 ~~the~~ **all superior courts, and, as to justice courts, only in justice courts that**
10 **are consolidated or co-located in multi-court complexes.**
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